

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matters of)	
)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act)	GN Docket No. 09-47
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act)	GN Docket No. 09-137

**COMMENTS OF UNITED STATES CELLULAR CORPORATION
NBP Public Notice # 11**

United States Cellular Corporation ("USCC") hereby submits the following comments in response to the FCC's Public Notice, NBP Public Notice # 11, (DA 09-2186, released: October 8, 2009) ("Public Notice"), in the above-captioned proceeding regarding whether backhaul costs ... stand as impediments to further broadband deployments."¹ Our answer to that fundamental question is an emphatic "yes." As a consequence, we ask that the FCC take the actions to reduce backhaul costs previously proposed by USCC and other carriers and summarized below.

¹ A National Broadband Plan for Our Future, GN Docket No. 09-51, Notice of Inquiry, (released April 8, 2009), at paragraph 5.

Introduction

The Public Notice asks hundreds of questions regarding, inter alia, carriers' projected needs for "middle" and "second" mile capacity, the current availability and pricing of such capacity, the economics of competitive middle and second mile backhaul development, and the nature of present day "middle mile" transport.

USCC hopes that much valuable information is elicited by these requests and that the data provided leads to constructive FCC action, as opposed to endless new proceedings during which the RBOCs will once again bury the FCC in paper attempting to justify their monopoly profits derived from deregulated backhaul. USCC, like other small and mid-sized wireless carriers, reasonably believes, based on its own experience and on publicly available information, that it is paying prices for second and middle mile backhaul which are neither just nor reasonable. USCC also submits that there is already sufficient information in the FCC's hands to take the necessary corrective actions.

I. High Special Access Rates Are Impeding Wireless Broadband Services and Should be Reduced

Backhaul connections for wireless base stations, referred to as "special access" when obtained from ILECs, what the Public Notice characterizes as "second mile" connections, are a large component of wireless carrier operating costs and an important element in their decisions concerning the construction of new cell sites and upgrading existing cell sites to provide broadband services. For example, Sprint stated in December 2008 that special access expenses accounted for one third of its total cell site operating expenses.² Upgrading cell sites to support 3G and 4G services requires additional

² Quoted in National Regulatory Research Institute, Competitive Issues in Special Access Markets ("NRRI Study", at 31, (2009)).

backhaul capacity to handle greater voice and data traffic volume and 3G services are supported by separate and distinct backhaul facilities from those required for 2G voice service. Projections of usage on 4G networks suggest that the backhaul requirements to support 3G networks are only a foretaste of what is to come.

The evidence assembled in the NRRI Study and in other sources made available to the FCC demonstrates that for most cell sites, and particularly those in rural areas, the market for backhaul services does not provide effective competitive alternatives to incumbent local exchange carriers' special access services. This remains the case despite the emergence of special access competition from CLEC, cable, microwave, fixed wireless, and fiber providers, welcome though that competition is. According to the NRRI Study, wireless carriers, which often must build cell sites far from those metropolitan areas where some competition has emerged, must still buy from "price cap" ILECs the great majority of the hundreds of thousands of special access circuits needed to connect their cell sites, with a typical cell site requiring one or two DS-1 lines.³

The NRRI Study found that in 2007, ILECs provided 99% of DS-1 channel terminations and 98% DS-1 transport services nationally.⁴ Such percentages make a prima facie case for the market power of ILECs offering special access. Also, in the FCC's "innovation" docket, Sprint provided a useful chart which demonstrated that the ILECs' share of special access revenue has remained "essentially unchanged" over the past decade, solid evidence that this market configuration is also not likely to alter in the near future.⁵

³ NRRI Study, p. 6.

⁴ NRRI Study, pp. 43-46.

⁵ Comments of Sprint Nextel Corporation in GN Docket Nos. 09-157, 09-51, filed September 30, 2009 ("Sprint Innovation Comments"), pp. 32-33.

The ILECs quasi-monopoly position with respect to the provision of special access would not, however, be a problem if the prices they charged for such services were just and reasonable. However, they are not, owing to the deregulation of such prices permitted to "price cap" LECs by the 1999 "Pricing Flexibility Order."⁶

Even with discounts available from ILECs based on a wireless carrier's volume and term commitments, five-year DS-1 prices are often *ten times* higher than corresponding retail rates charged to end users for equivalent services. The 2009 NRRI Study concluded: "This pricing evidence shows that market forces are not reducing rates in Phase II areas.... Even after adjustment for separations problems, RBOC earnings on special access are well above the 11.25% rate most recently set by the FCC. In the case of AT&T and Qwest, earnings are about three times that rate."⁷ Similarly, a report by the Government Accountability Office in 2006 found that areas under Phase II pricing flexibility (where the FCC assumed that competitive pressure would be most effective) had higher average revenue and list prices for channel terminations and dedicated transport than areas under price caps or Phase I flexibility.⁸ Along the same lines, an article in 2004 by two FCC economists found that ILECs granted pricing flexibility increased many rates and decreased none, indicating that they exercised market power.⁹

Such pricing practices have large and negative consequences. High special access rates raise the revenue threshold for economically viable cell sites and thus diminish

⁶ Access Charge Reform, CC Docket No. 92-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) ("Pricing Flexibility Order"), aff'd sub nom. World Com v. FCC, 238 F.3d 339 (D.C. Cir. 2001).

⁷ NRRI Study, pp. 68, 80.

⁸ Government Accountability Office, FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services 27-28 (GAO-07-80, Nov. 2006).

⁹ Uri & Zimmerman, "Market Power and the Deregulation of Special Access by the Federal Communications Commission," 13 Information & Telecommunications Tech. L. 129, 168-70 (2004).

wireless coverage. Pointing to the FCC's ruling that bars wireless carriers from ordering unbundled network elements (UNEs, which are priced based on total element long-run incremental costs), the NRRI Study noted: "There are still rural areas in the country without reliable wireless service. It is easy to postulate a rural area without cell service where the difference between special access rates for a DS-1 circuit and a UNE loop rate could mean the difference between a wireless cell tower and no cell tower."¹⁰

Inflated special access charges raise tower construction costs, discourage investments in towers and reinforce the competitive advantage of AT&T Wireless and Verizon Wireless, owing to their common ownership with large ILECs.¹¹ Also, Verizon and AT&T often themselves compete with wireless carriers like USCC in the provision of Internet access, thus increasing the competitive imbalance.

Moreover, even the "discounts" sometimes offered by ILEC providers of backhaul can reinforce their unfair dominance of that market. In order to obtain special access at rates less than the standard, non-discounted, month-to-month "rack" rates,

¹⁰ NRRI Study at 98.

¹¹ Sprint Innovation Comments, pp. 28-31.

carriers must often guarantee to the ILEC:¹²

"multiyear package[s] with commitment levels set at up to 100% of ... current demand, severe shortfall penalties, termination liabilities; and restrictive circuit migration charges and restrictions. Such terms are effective deterrents against using an alternative access vendor to meet even a small portion of a carrier's backhaul needs."¹³

The present system is thus unfair to wireless special access purchasers and constitutes a major barrier to wireless expansion and the provision of broadband.

II. The FCC Must Act To Remedy These Unfair Practices

USCC submits that the way forward is reasonably clear. The Commission must recognize that its central assumptions in the 1999 Pricing Flexibility Order, namely that competition to the ILECs would emerge, and that it could be measured, by "proxy," in "phases" determined by the percentage of "collocation" in ILEC central offices, proved to be wrong, at least as applied to special access.¹⁴

Thus, the FCC should issue a focused and mandatory request for data relating specifically to special access prices and revenues as part of a larger proceeding involving "price cap" special access providers. After reviewing that data, we believe the FCC will, with respect to special access, discontinue application of the pricing flexibility "triggers" geared to collocation percentages, lower current special access prices to more reasonable levels (still of course allowing a fair rate of return), and address the anti-competitive terms and conditions in existing discount plans.

By so acting, the FCC would better enable all wireless carriers to develop their 3G, 4G and broadband networks. USCC would again note that the provision of

¹² NRRI Study, pp. 71-77; Reply Comments of Sprint Nextel Corporation in WT Docket No. 09-66 filed October 22, 2009 ("Sprint Competition Reply Comments"), p. 4.

¹³ Sprint Competition Reply Comments, p. 4.

¹⁴ NRRI Study, p. 10.

broadband by small, regional and mid-sized wireless carriers is directly linked to FCC action on special access, as well as to FCC action on various other pending matters, such as ending handset exclusivity, extending the automatic roaming rule to include all data services, limiting the in-market exclusion to the automatic roaming rule, taking action against tower siting delays,¹⁵ providing necessary USF support for rural wireless providers, and ensuring that smaller carriers have access to necessary spectrum.

We submit that the time for action on all those matters is now or at least soon, before the remaining smaller and mid-sized wireless providers are absorbed by their national competitors, as so many of their "Tier II" predecessors have been. Special access reform is a vital part of this process.

[Remainder of Page Left Blank Intentionally]

¹⁵ We are encouraged by the Commission's plan to take action with respect to tower siting delays at its November 18, 2009 open meeting. See Press Release, "FCC Announces Tentative Agenda For November 18th Open Meeting," released October 28, 2009.

Conclusion

The FCC must act to decrease special access charges. By doing so, the FCC would promote both deployment of broadband services and investment in wireless networks.

Respectfully submitted,

**UNITED STATES CELLULAR
CORPORATION**

By: Grant B Spellmeyer p c
Grant B. Spellmeyer
Director, Regulatory and Legislative
Affairs
United States Cellular Corporation
8410 West Bryn Mawr
Chicago, IL 60631
Phone: 723-399-4280
Fax: 723-399-3133
Email: grant.spellmeyer@uscellular.com

**UNITED STATES CELLULAR
CORPORATION**

By: Peter M Connolly
George Y. Wheeler
Peter M. Connolly
Holland & Knight LLP
2099 Pennsylvania Avenue, NW
Suite 100
Washington, DC 20006-6801
Phone: 202-955-3000
Fax: 202-955-5564
E-mail: george.wheeler@hklaw.com
E-mail: peter.connolly@hklaw.com

November 4, 2009

8943177_v3